

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF NEW YORK

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4 SIDNEY MANES, Administrator of the Estate of HECTOR
5 RIVAS,

6 Plaintiff,

7 Index No. 19-CV-844 (BKS) (TWD)

8 against

9 ONONDAGA COUNTY, CITY OF SYRACUSE, WILLIAM
10 FITZPATRICK, DR. ERIK MITCHELL, and "JOHN DOES 1-10",

11 Defendants.

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18 **EXAMINATION BEFORE TRIAL** of

19 **DANIEL SPITZ, M.D.**, expert testimony taken
20 via videoconference by Zoom, held in New York
21 State on August 15, 2024. This deposition
22 was taken by LISA M. SCHUSTER, Court Reporter
23 and Notary Public in and for the State of
24 New York.
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4 APPEARANCES:

5 For the Plaintiff:

6 THE LAW OFFICES OF JOSHUA MOSKOVITZ, P.C.
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9 BY: JOSHUA MOSKOVITZ, ESQ.

10 Also Present: Sara Wolkenstorfer

11 For the Defendants:

12 ROBERT F. JULIAN, P.C.
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15 BY: ROBERT JULIAN, ESQ.

16 Also Present: Mary Jumbelic, M.D.

17 PARROTTA STUDIO
18 350 Merchants Road
19 Rochester, New York
20 Ken Williamson, Videographer
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1 A. There are outliers, of course.

2 Q. Well, no. Define outliers.

3 A. Well, I mean, medicine is not an exact
4 situation. Medicine there are always outliers and they
5 don't always have, you know, a defined explanation.

6 Following the scientific method and process of
7 lividity and rigor mortis, we get some parameters upon
8 which opinions are made on a day-to-day basis by forensic
9 pathologists. Are there situations where rigor mortis
10 lasts longer than 48 hours, well, sure. Part of them are
11 related to extremes of temperature. You know. Are there
12 anecdotal reports? Sure, there's anecdotal reports of
13 everything, that's not where opinions are based. We're
14 not basing our opinions based on an anecdotal report that
15 really can't be scientifically analyzed because we don't
16 have a series of situations.

17 If you look at -- this is something that's been
18 going on for since the beginning of forensic medicine.
19 If you look at all the forensic textbooks, sure they say
20 that there are outliers, but when you look at the real
21 scientific reproducible data, you get more of a defined
22 sequence for lividity and rigor mortis and that's where
23 opinions are based. It doesn't mean that it's a hundred
24 percent across the board, nothing really is in medicine.

25 MR. JULIAN: Thank you. Can we take

1 Saginaw County to do their medical examiner work. That
2 was several years after some of the Macomb County
3 employee problems.

4 MR. JULIAN: Can I have five minutes and I
5 think we're done?

6 THE WITNESS: Sure.

7 VIDEOGRAPHER: The time is 4:29. We are
8 off the record.

9 (Whereupon, a recess was taken)

10 VIDEOGRAPHER: We are on the record. The
11 time is 4:36 p.m. Please continue.

12 MR. JULIAN: Doctor, that completes my
13 questioning. Thank you for your time.

14 THE WITNESS: Great. Thank you.

15 **EXAMINATION BY**

16 **MR. MOSKOVITZ:**

17 Q. I have a couple questions, if I may. Good
18 afternoon, Dr. Spitz. Can you hear me okay?

19 A. Yeah.

20 Q. Great. So Mr. Julian asked you a number of
21 questions about discretion and judgment that forensic
22 pathologists exercise in forming their opinions, you
23 recall those questions?

24 A. Yes.

25 Q. So you agree generally that there is some

1 amount of discretion or judgment that forensic
2 pathologists must utilize, right?

3 A. Yes.

4 Q. Do you believe that it is an exercise of
5 discretion or judgment for a forensic pathologist to
6 ignore known scientific data?

7 A. No, you certainly shouldn't do that.

8 Q. Do you think it's an exercise of discretion or
9 judgment for a forensic pathologist to ignore known
10 scientific assessment of common evidence like rigor
11 mortis, for instance?

12 A. No. You should analyze it in the context of
13 what is generally known and accepted.

14 Q. So for instance, with rigor mortis we know from
15 scientific -- reproducible scientific studies that there
16 is a standard window for which rigor mortis sets in and
17 dissipates, right?

18 A. Yes.

19 Q. We'll get to this in a second. There might be
20 some outliers to that, but scientifically we can say this
21 is the normal course that there is this window of time
22 for rigor mortis to fully set and then for it to fully
23 dissipate, correct?

24 A. Correct.

25 Q. Now, do you think a forensic pathologist is

1 exercising discretion or judgment if they -- in reaching
2 an opinion about the likely window of time of death
3 ignore the widely accepted scientific knowledge about the
4 time it takes for rigor mortis to set in and dissipate?

5 A. No. I think you need to not only document the
6 findings, but then interpret those findings in the
7 context of what is known. And there is an understanding
8 that you need to build in some degree of window, which
9 I've done in this case, to indicate that 48 hours is the
10 outer time frame does include a window of time to account
11 for the fact that not everybody is identical and that not
12 every environment is, you know, perfect, you know, to
13 account for something that is very specific, but even
14 when you put in that window, you're at that 48-hour time
15 frame.

16 And so I think at a minimum Dr. Mitchell should
17 have recognized that the scientific parameters indicate
18 that the death was in a 48-hour time frame. Of course if
19 he wants to discuss circumstances, you know, that's not
20 really him to analyze, those are just -- those should be
21 facts that he can take into consideration, but those
22 aren't really -- and if there's a discrepancy, then I
23 suppose you can indicate there's a discrepancy, but, you
24 know, Dr. Mitchell should be focussed on the science and
25 those are his findings, and so therefore he should be

1 rendering opinions that are reproducible and known and
2 understood with respect to those parameters.

3 Q. I want to focus on the scientific aspect of the
4 forensic pathologist's work. Based on your experience
5 and to a reasonable degree of certainty from that
6 experience and training, is there any basis in science
7 within the field of forensic pathology that supports an
8 opinion that Valerie Hill's death could have occurred
9 more than 48 hours before she was discovered?

10 A. No, I don't think the scientific data would
11 support a longer time frame than 48 hours.

12 Q. So we talked or you spoke a bit with Mr. Julian
13 about outliers. Now, is it fair to say that in human
14 experience, there's always outliers?

15 A. Of course. There's outliers in virtually
16 everything that goes on.

17 Q. Right. And so science is aware of outliers and
18 takes that into account and that's not unusual, right?

19 A. Right. You know. You're not saying that a
20 hundred percent of people follow the exact same process.
21 What you're saying is that we have known reproducible --
22 known reproducible process to analyze these kinds of
23 things, and while there's a bell curve, the overwhelming
24 majority, you know, follow that process, and there are
25 outliers. And usually there's reasons for those

1 outliers, but sometimes there's not or the reasons that
2 exist might not be known.

3 Q. So when giving a scientific opinion or medical
4 opinion in your report, you talk about a reasonable
5 degree of medical certainty. That's the type of opinion
6 that's based on reproducible data acknowledging that
7 there might be some extreme outliers, right?

8 A. Correct.

9 Q. And so would you say that in your experience in
10 providing an opinion on a window of the most likely time
11 of death, you would use outliers in expressing that
12 opinion?

13 A. I would not. I would not, because again,
14 you're looking at the overwhelming majority of cases, and
15 I suppose if you wanted to mention that outliers can
16 exist, but outliers are rare, you know, that would be a
17 truthful and accurate statement. But as far as giving
18 opinions to a reasonable degree of medical certainty,
19 that encompasses what is known and reproducible and
20 doesn't really need to incorporate outliers, because
21 outliers exist in everything we do.

22 Q. Are you aware of any scientific literature that
23 supports the conclusion that a room ambient temperature
24 of 62 degrees can prolong rigor mortis?

25 A. Not to any significant measurable degree. No,

1 I'm not aware of anything like that.

2 Q. Are you aware of scientific literature that
3 supports the conclusion that an ambient room temperature
4 of 62 degrees can prolong lividity?

5 A. Not to any significant or measurable degree.

6 Q. Are you aware of any scientific literature that
7 supports, taking into account anything that's visible in
8 the photographs of Miss Hill's brain, in determining the
9 likely time of death?

10 A. No.

11 MR. MOSKOVITZ: Thank you. Those are all
12 the questions I have for Dr. Spitz.

13 MR. JULIAN: Nothing further.

14 VIDEOGRAPHER: Okay. This will conclude
15 today's testimony. The time is 4:44 p.m. We
16 are off the record.

17 (Whereupon, the examination concluded)

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